

FEDERAL ELECTION COMMISSION
999 E Streets, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR 6414

DATE COMPLAINT FILED: October 29, 2010

DATE OF NOTIFICATION: November 4, 2010

DATE OF LAST RESPONSE: December 2, 2011

DATE ACTIVATED: March 14, 2011

EXPIRATION OF SOL: Earliest: April 12, 2010
Latest: October 21, 2015

COMPLAINANT:

**Edward R. Martin Jr. on behalf of Ed Martin for
Congress Committee**

RESPONDENTS:

Russ Carnahan
Russ Carnahan in Congress Committee and
John R. Truman, in his official capacity as treasurer ¹
Veritas Research, LLC
Michael Corwin
Jeannine Dillon

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(7)(B)
2 U.S.C. § 441d
2 U.S.C. § 441a(f)
11 C.F.R. § 100.26
11 C.F.R. § 100.52(d)
11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

**This matter involves alleged coordination between Russ Carnahan and Russ Carnahan in
Congress Committee ("the Committee") and Veritas Research, LLC ("Veritas"), Michael Corwin,**

¹On November 7, 2011, the Committee filed an amended Statement of Organization naming John R. Truman as its new treasurer.

1 and Jeannine Dillon, in the creation and publication of a website attacking Ed Martin, Representative
2 Carnahan's opponent in the 2010 general election in Missouri's 3rd Congressional District. The
3 website focuses on the results of a three-month investigation by Corwin and Dillon, and it purports
4 to document Martin's role as an employee in the St. Louis Archdiocese in 1998-2001 as it responded
5 to allegations of clergy sexual abuse. Corwin and Dillon are prominently featured as the creators of
6 the website, and notices on the site state that they are solely responsible for its content. Complainant
7 Ed Martin essentially asserts that the website, TheRealEdMartin.com, constituted an improperly
8 disclosed coordinated communication and should have included a disclaimer stating that it was paid
9 for and authorized by the Committee. The complaint bases its allegations on the Committee's
10 reported payments for media-related consulting and research to Veritas, a limited liability company
11 formed by Dillon, and the proximity in time of one of the payments to the date the website domain
12 name was registered. The complainant concludes from these facts that the Committee fully or
13 partially paid for the website.

14 Upon review of the complaint, responses, and available information, it does not appear that
15 the website satisfies the content standard of the Commission's coordinated communication
16 regulations, a necessary requirement for a communication to be considered coordinated. Therefore,
17 the Office of General Counsel recommends that the Commission find no reason to believe that
18 Representative Carnahan and the Committee violated 2 U.S.C. § 434(b) by failing to report in-kind
19 contributions in creation and posting of TheRealEdMartin.com website and 2 U.S.C. § 441d by
20 failing to include a disclaimer on the website. This Office also recommends that the Commission
21 find no reason to believe that Corwin, Dillon, and Veritas violated the Federal Election Campaign
22 Act of 1971, as amended ("the Act"), with respect to the coordinated communication allegation.

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1 The Joint Response of Corwin, Dillon, and Veritas ("Joint Response"),² however, indicated
2 that Veritas, through Corwin, provided investigative services to the Committee without charge, did
3 not charge the Committee for media consulting and discrete research, and charged the Committee a
4 discounted price for fieldwork. These facts raised the possibility that Veritas may have made, and
5 the Committee may have accepted, either an excessive or prohibited contribution in the form of
6 services provided at no charge or at less than the usual and normal charge, depending on the value of
7 the services and Veritas's treatment under tax law. It also raised a potential reporting violation by
8 the Committee. Because these issues were not raised in the complaint, we notified Respondents of
9 these potential violations to provide them with an opportunity to respond. The Committee and
10 Corwin, who worked as a subcontractor to Veritas through his own firm, filed supplemental
11 responses. See Attachments A (Committee Suppl. Resp.) and B (Corwin Suppl. Resp.).

12 Based on the supplemental responses and in light of the small amounts potentially in
13 violation, the Office of General Counsel recommends that the Commission exercise its prosecutorial
14 discretion and dismiss this matter as to the Committee regarding any potential violations of 2 U.S.C.
15 §§ 441a(f) or 441b related to accepting in-kind or prohibited contributions in the form of services
16 provided at no charge or at a discount and any potential violations of 2 U.S.C. § 434(b) for failing to
17 report any such contributions. We also recommend that the Commission exercise its prosecutorial
18 discretion and dismiss this matter as to Veritas regarding any potential violations of 2 U.S.C.
19 §§ 441a(a)(1)(A) or 441b for making an excessive or prohibited in-kind contributions in the form of
20 services provided at no charge or at a discount. Finally, we recommend that the Commission close
21 the file in this matter.

²Corwin, Dillon, and Victor Arango, Dillon's husband and, jointly submitted a sworn response to the complaint. The Joint Response apparently was submitted on behalf of Veritas as well, because Arango is the registered agent of Veritas and was notified of the complaint in his official capacity.

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II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In or around April 2010, the Committee hired a media firm that subcontracted with Corwin, a New Mexico private investigator with extensive experience working in political campaigns, to conduct opposition research on Martin. The firm paid Corwin's firm, Corwin Research & Investigations, LLC ("CRI") a \$2,500 retainer for that research. Joint Response at 3, Ex. E. Subsequently, the Committee hired Veritas, a newly formed company, to develop information on Ed Martin's record, "including his past employment, with an eye toward use in future media communications." Committee Response at 2. Veritas, a Colorado limited liability company, was formed on July 23, 2010 by Corwin's former colleague, Jeannine Dillon, a former television investigative news producer. Colorado Secretary of State records; Corwin Suppl. Resp. at 2. Corwin apparently introduced her to the Committee. See Joint Response at Ex. G. According to Corwin, Dillon operated Veritas as a sole proprietorship. Corwin Suppl. Resp. at 1-2. Working together through Veritas, Corwin and Dillon conducted the research and investigative work as authorized by the Committee.

Veritas's work for the Committee entailed two research trips to St. Louis that, according to Veritas's invoices, consisted of general and document research, fieldwork, interviews, pre-production research, and pre-production fieldwork by Corwin and Dillon. See Joint Response, Exs. A, B, C, and D. Dillon emailed the Committee an invoice in advance of the first trip, from August 12-15, 2010, reflecting a charge for a \$4,500 retainer to be paid before the services began and generally describing the services to be performed inclusive of travel expenses. *Id.*, Ex. A. More than two weeks after the second trip, from September 4-5, 2010, Dillon emailed the Committee another invoice. *Id.*, Ex. C. This second invoice contained a similar description of

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1 the services to be performed inclusive of all research and travel expenses, and it also contained
2 an itemized breakdown for work billed at an hourly rate, a discounted flat rate for field work,
3 source fees, and itemized travel expenses, all totaling \$1,955. *Id.* The second invoice also
4 itemized services provided at "*no charge*," including updating a memo, discrete narrowly-
5 focused research topics, and media consulting (emphasis added). *Id.* The Committee's reports
6 to the Commission reflect payments of these invoices on August 2 and September 27, 2010,
7 respectively.

8 In the course of providing services to the Committee, Veritas and the Committee both
9 maintain that disagreements emerged over the development and presentation of Veritas's research
10 and "the scope of future work." Committee Response at 2; Joint Response at 4; Committee Suppl.
11 Resp. at 2. The Committee states that Veritas wanted to produce "a journalistic exposé" on Martin's
12 role in the St. Louis Archdiocese's response to allegations of clergy sexual abuse of children, but the
13 exposé was out of step with the Committee's political interests. Committee Response at 2. The
14 Committee apparently believed Veritas's approach would alienate Catholic voters. Joint Response
15 at 4, Exs. F and G. Veritas, for its part, viewed the information it had gathered as a matter of grave
16 public interest, characterizing it as Martin's silence in the face of alleged child sexual abuse. Joint
17 Response at 4.

18 According to Respondents, after increasingly heated discussions about the issue, including a
19 mid-September email exchange in which Corwin unsuccessfully argued that a recent comment by
20 the Pope about the Church's response to clergy-child abuse inoculated the Committee against
21 charges of anti-Catholic bias, Veritas terminated its working relationship with the Committee. *Id.* at
22 4, Ex. F; see Committee Suppl. Resp. at 2. In an October 4, 2010, termination email from Corwin to
23 Committee campaign manager Angela Barranco, Corwin maintained that Barranco had objected to

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1 releasing a video addressing the Martin-clergy abuse issue on You Tube, despite approval of such a
2 release by a Committee compliance attorney and the Democratic National Committee.³ *Id.*, Exs. G
3 and H. Corwin also said that he “*donated* huge amounts of time to an investigation” of the issue
4 (emphasis added). *Id.* He advised Barranco that he, Corwin, had consulted with his own compliance
5 lawyers and made clear that he viewed work conducted on the issue as belonging variously to him
6 (“the research is all mine”) and to him and Dillon (“[we] can take our work”); that they intended to
7 take the work and use it in some way; and that they would use it with “clear disclosure that the work
8 is ours and not approved by a campaign, candidate or committee.” *Id.* Corwin also advised
9 Barranco that Dillon would continue working with him and would not do production-related work
10 for the Committee. *Id.*

11 Barranco responded by email to both Corwin and Dillon on October 6, 2010. Joint
12 Response, Ex. H. Barranco expressed disappointment but not surprise “as it has been clear to me for
13 some time that you were interested in a different direction for the project than we [the Committee]
14 were.” *Id.* She also disclaimed responsibility for Corwin and Dillon’s future actions involving the
15 issue, stating: “[f]rom this point forward Carnahan in Congress has nothing to do with this matter,
16 and we wish to have no future involvement in it. We also understand that we have no further debts
17 to you, as per your final invoice.” *Id.* The following day, according to the Committee’s amended

³Corwin’s October 4, 2010, email does not expressly state that the You Tube video launch and the investigation he referred to concerned the Martin-clergy abuse issue, but the Joint Response makes clear that it was. See e.g., Joint Response at 3-5 (“Because of the exceptionally difficult nature of the subject of the investigation, pedophile priests and child molestation, a rift developed . . .”; “. . . Barranco . . . grew increasingly reluctant to use the information regarding Martin’s role on the Curia and the pedophile priest scandal”; “[r]ealizing there was no way that Barranco would approve using the information, a decision was made . . . to break away from the campaign”; and “. . . Corwin and Dillon decided to proceed on their own, at their own expense with the Real EdMartin.com website and video”) (emphasis added).

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1 2010 Pre-General Report, the Committee made a third payment to Veritas for "research" in the
2 amount of \$1,188.99.⁴

3 Veritas asserts that it delayed terminating its work relationship with the Committee until it
4 had invoiced and received payment for the work done on the second St. Louis trip and says it
5 consulted with two attorneys before it severed the relationship. Joint Response at 4.

6 On September 29, 2010, two days after the Committee paid the second invoice, Corwin purchased
7 the domain name, "The Real Ed Martin.com," for \$12, and he subsequently purchased a year of
8 webhosting at a total cost of \$56. Complaint, Attachment J; Joint Response at 5.

9 TheRealEdMartin.com website launched on or about October 19, 2010.⁵ See Jo Mannies,
10 *Democratic Researcher Offers More Details on Creation of Anti-Martin Website*, St. Louis Beacon,
11 October 27, 2010 ("Mannies, *Democratic Researcher*").

12 The website's home page describes its content as "the result of a three month investigation
13 that links Ed Martin—who is running for Missouri's 3rd Congressional District—to the quiet
14 movement of pedophile priests within the St. Louis Archdiocese during the years he worked there."
15 The "About Us & The Project" section of the website notes that the investigation reveals important,
16 previously unpublished facts "that raise serious concerns about Candidate Martin's integrity,
17 judgment and ability to serve the public as a United States Congressman." A video prominently

⁴The Committee had originally reported this October 7, 2010 payment in its 2010 Pre-General Report as made to "VR Research" on 18th Street in Washington, DC. As noted in footnotes 3 and 8 of the First General Counsel's Report that originally circulated to the Commission, there is a company called "VR Research" with offices on 18th Street and in Oakland, California. The Committee apparently did employ "VR Research" as reflected by a November 4, 2010, payment to the Oakland office of the company disclosed in the Committee's 2010 Post-General Report. Since neither of the original responses to the complaint referred to it, we opined that the amended report may have been erroneous, or conversely, that the payment may have been to pay for some of the "no charge"/discounted services reflected in Veritas's second invoice. The supplemental responses do not shed any light on this issue.

⁵The website continues to be available at <http://therealedmartin.com/www.therealedmartin.com/HOME.html>, but it has now been revised.

1 posted on the website features interviews of an alleged clergy abuse victim, his mother, and a former
2 Archdiocese employee. Corwin and Dillon also uploaded the video to YouTube. Joint Response
3 at 1. Other content on the website includes an extensive narrative of Martin's role as a member of
4 the Archdiocese Curia (a governing board) and director of its Human Rights Office, the
5 Archdiocese's handling of child sexual abuse allegations, details of the lawsuit filed by the family of
6 the alleged victim against the Archdiocese, and other relevant information.

7 Corwin wrote the website content, Dillon prepared the video, and Amago designed and
8 created the website without compensation. Joint Response at 5. Statements throughout the website
9 read, in pertinent part, that the website complies with FEC Regulations 11 C.F.R. §§ 100.26,
10 100.155 and 100.94, that the information within it has not been "paid for, endorsed, or approved by
11 any . . . candidate or campaign," and that Corwin and Dillon are solely responsible for its content.
12 Committee Response at 2; Joint Response at 5. The Committee issued a press statement denying its
13 "knowledge, encouragement or authorization" of the website. *See Mannies, Democratic Researcher,*
14 *supra; see also Jake Wagman, Carnahan Campaign Blames Anti-Martin Website on Rogue*
15 *Researchers*, St. Louis Times Dispatch, October 27, 2010.⁶

16 B. Legal Analysis

17 1. Coordinated In-Kind Contribution with Respect to the Website

18 Under the Act, no person may make a contribution, including an in-kind contribution, to
19 a candidate and the candidate's authorized political committee with respect to any election for
20 Federal office that, in the aggregate, exceeds \$2,400. 2 U.S.C. § 441a(a)(1)(A) (2010 election
21 cycle); *see* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(d)(1) (defining "contribution" as

⁶ The Committee initially misreported in its 2010 October Quarterly Report the first two payments to Veritas by listing an incorrect address for Veritas in Tucson, Arizona, rather than in Colorado. The Committee amended its reports after a blog traced the misreported Tucson address to a research program at the University of Arizona called the "Veritas Research Program." *See* 24thstate.com, *The Two Suspect Payments in the Carnahan Catholic Attack*, Oct. 25, 2010.

1 including in-kind contributions). Corporations are prohibited from making any contributions in
2 connection with a federal election. 2 U.S.C. § 441b. The Act defines in-kind contributions as,
3 *inter alia*, expenditures by any person "in cooperation, consultation, or concert, with, or at the
4 request or suggestion of, a candidate, his authorized political committees, or their agents"
5 2 U.S.C. § 441a(a)(7)(B)(i). No candidate or political committee may knowingly accept a
6 contribution in violation of the Act. 2 U.S.C. § 441a(f). A political committee must disclose all
7 contributions it receives, including in-kind contributions. 2 U.S.C. § 434(b); 11 C.F.R.
8 §§ 104.3(a), 104.13(a)(1).

9 Under Commission regulations, a communication is coordinated with a candidate, an
10 authorized committee, a political party committee, or agent thereof if it meets a three-pronged test:
11 (1) it is paid for, in whole or part, by a third party (a person other than the candidate, authorized
12 committee or political committee); (2) if at the time of the events at issue, it satisfied one of four
13 "content" standards;⁷ and (3) it satisfies one of six "conduct" standards. *See* 11 C.F.R. § 109.21.
14 Three of the four content standards pertinent to this matter require that a communication be a "public
15 communication" to be considered coordinated.⁸ *See* 11 C.F.R. §§ 109.21(c)(2) (a public
16 communication that republishes campaign materials); 109.21(c)(3) (a public communication that
17 expressly advocates the election or defeat of a Federal candidate); and 109.21(c)(4) (a public
18 communication that references a clearly identified candidate and is publicly distributed in the
19 candidate's jurisdiction 90 days or fewer before an election). The term "public communication"
20 encompasses certain types of general public political advertising such as broadcasting, newspaper,

⁷The Commission promulgated a fifth content standard to comply with a court decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). That standard, which encompasses public communications that are the functional equivalent of express advocacy, is not applicable in this matter because it did not become effective until December 1, 2010. *See Explanation and Justification, Coordinated Communications*, 75 Fed. Reg. 55,947 (Sept. 15, 2010).

⁸The fourth content standard, electioneering communications, encompasses only broadcast, cable, and satellite communications and is not relevant here. *See* 11 C.F.R. § 100.29(c)(1); 2 U.S.C. § 434(f)(3)(A).

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1 and mass mailings, but it specifically excludes Internet communications other than those placed for a
2 fee on another person's website. 11 C.F.R. § 100.26; *see also* 2 U.S.C. § 431(22).

3 Additionally, the Act and Commission regulations require all public communications made
4 by a political committee and political committee websites to include a disclaimer stating that the
5 committee paid for the communication. 2 U.S.C. § 441d; 11 C.F.R. § 110.11(a). Communications
6 paid for by other persons require disclaimers only if they constitute electioneering communications
7 or public communications that expressly advocate the election or defeat of a clearly identified
8 Federal candidate or solicit contributions. 11 C.F.R. §§ 110.11(a)(2), (3), and (4); 2 U.S.C. § 441d.
9 Such disclaimers must identify the person who paid for the communication and state whether or not
10 they are authorized by a candidate or a candidate's authorized committee or agent. 11 C.F.R.
11 §§ 110.11(b)(2) and (3).

12 The complaint maintains that the website constituted an improperly disclosed coordinated
13 communication between the Committee and Representative Carnahan and Veritas, Corwin, and
14 Dillon. *See* Complaint at 1, 4. It also alleges that the website failed to include a disclaimer
15 noting that the Committee paid for and authorized the site. *Id.* at 2-3, 5.

16 The complaint centers on the allegation that the Committee's payments to Veritas wholly
17 or partially financed the website. The complaint specifically alleges that the website satisfies the
18 coordinated communications content standard at 11 C.F.R. § 109.21(c)(4) because it clearly
19 identified Ed Martin as a candidate and was publicly distributed in Martin's congressional
20 district 90 days or fewer before the November 2, 2010, election, as it was widely available on the
21 Internet as of October 18, 2010. *Id.* at 3-4. The complaint also asserts that the website satisfies
22 either the "substantial discussion" or "former employee/independent contractor" standards of the
23 conduct prong at 11 C.F.R. §§ 109.21(d)(1) and (5), respectively, and relies on the same central

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1 facts for both allegations: that Corwin, Dillon, and/or Veritas created and produced the website
2 after substantial discussion with, or based on the Committee's plans and needs as conveyed by,
3 the Committee, Carnahan, or their agents, because (1) the Committee made payments to Veritas;
4 (2) Corwin and Dillon are associated with Veritas; and (3) Corwin and Dillon, the website
5 creators, registered the website's domain name just two days after the Committee's last apparent
6 payment to Veritas and launched it just before the general election to help Carnahan by attacking
7 Martin. *Id.* at 3-4. Finally, the complaint posits that the payment prong is satisfied because the
8 Committee "fully or partially" paid for the website, citing the August and September payments
9 to Veritas totaling \$6,495. *Id.*

10 The Joint Response and Representative Carnahan's response, which the Committee has
11 adopted, maintain that the website fails to constitute a coordinated communication, noting that
12 the content prong has not been met because only Internet communications placed for a fee on
13 another's website are considered "public communications." Committee Response at 3; Joint
14 Response at 1-2. The Committee states that it believes Corwin and Dillon developed and
15 published the website after Veritas ended its relationship with the Committee. Committee
16 Response at 2. Although the Committee acknowledges the possibility that the website "may
17 have drawn on research" Corwin and Dillon conducted while working for the Committee, it
18 denies that Carnahan or the Committee authorized the website or had control over its content or
19 the circumstances of its publication. *Id.*

20 The Joint Response instead asserts that Corwin and Dillon proceeded independently with the
21 website at their own expense following their disagreement with and break with the Committee. Joint
22 Response at 4-5. They specifically deny that the Committee compensated Veritas or the individuals
23 associated with creating the website for any work relating to the website. *Id.* at 3. Although the

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1 Joint Response acknowledges they were paid for work conducted for the Committee, the Joint
2 Response asserts that Veritas was paid for "other actions unrelated to Internet activity," and that
3 there was no legal bar that precluded Veritas and its related individuals from creating the website.
4 *Id.* at 2. Finally, the Joint Response appears to address the conduct standard, stating that they had no
5 discussions with Barranco about publishing a website to release information about the Martin-clergy
6 abuse issue, that neither Barranco nor the Committee ultimately approved a video, that the
7 Committee did not endorse or authorize the website or the video, and that neither the website nor the
8 video was ever presented to the Committee. *Id.* at 4 and 5.

9 It does not appear that there is reason to believe that the respondents engaged in unlawful
10 coordination under the Act and Commission regulations. The website is not a required "public
11 communication" under Commission regulations. As noted above, the Commission has exempted
12 Internet communications from the definition of "public communication" other than those placed for
13 a fee on another person's website. Although it appears that the Committee may have paid Veritas, at
14 least in part, to gather some of the information ultimately displayed on the website, on the facts
15 presented here, such payments do not amount to the Committee having placed an Internet
16 communication on another's website for a fee.⁹

17 Moreover, the September and October emails between the Committee and individuals
18 associated with Veritas present a compelling case that the Committee did not, in fact, engage in
19 coordinated conduct. See 11 C.F.R. § 109.21(a)(3), (d). Those contemporaneous exchanges
20 demonstrate that the Committee did not want to rely on the Martin-clergy abuse allegations because
21 it believed that such an attack would backfire by alienating Catholic voters. Joint Response, Exs. G
22 and H. Rather, the preponderance of the available facts – including those emails – shows that

⁹The same analysis would apply to the placement of the website video on YouTube since one does not pay a fee to place items on YouTube.

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1 Corwin and Dillon crafted and developed the narrative and prepared the video content on the website
2 because *they* wanted to communicate *their* view of the issue to a mass audience notwithstanding that
3 the Committee declined to do so. *Id.* Corwin's October 4 resignation email, further amplified by the
4 discussion in the Joint Response, indicates that a video concerning the Martin-clergy abuse issue was
5 discussed with the Committee. But the Joint Response specifically states that no discussion took
6 place with Barranco about setting up a website to release the information, and no one from the
7 Committee was shown or approved the website content or video. Joint Response at 4.¹⁰

8 In sum, because the website does not constitute a "public communication," the content
9 standard has not been met. Further, as noted, there is no basis to conclude on these facts that the
10 conduct prong would be satisfied. The Committee therefore did not receive a coordinated in-kind
11 contribution from Veritas, Corwin, or Dillon, none of the Respondents was required to post a
12 disclaimer on the site, and the Committee had no reporting obligation relating to the website or
13 payments to Veritas. Accordingly, we recommend that the Commission find no reason to believe
14 that Representative Carnahan and the Committee violated 2 U.S.C. §§ 434(b) and 441d.
15 Additionally, we recommend that the Commission find no reason to believe that Veritas, Corwin,
16 and Dillon violated the Act with regard to TheRealEdMartin.com website.

17 2. In-Kind Contribution in the Form of Investigative/Opinion Research Services
18 Provided at No Charge or at a Discount
19

20 The services listed as provided at a discount or at "no charge" in Veritas's second invoice
21 and Corwin's statement that he donated "huge amounts of time" to the investigation raise

¹⁰Once the website went live, the campaign called upon Martin to address the issue raised by the website. See Jo Mannies, *Democratic Researcher, supra*; see also Jack Wagman, *Martin Files Complaints over Website Done by Researchers Who Worked for Carnahan*, St. Louis Post Dispatch, Oct. 29, 2018. Nonetheless, that action does not support a conclusion that there is reason to believe the Respondents engaged in unlawful coordination. First, the activity does not constitute actionable "coordination" standing alone, and no other evidence suggests that the parties in fact secretly coordinated here. And most importantly, not only do the Respondents deny coordination, their internal email traffic from the time in question refutes any inference that they did.

1 concerns that Veritas may have made, and the Committee may have accepted, a prohibited in-
2 kind contribution, depending on Veritas's tax status, or unreported excessive contribution.
3 Unless specifically exempted, the provision of goods or services without charge or at a charge
4 which is less than the usual and normal charge for goods and services is a contribution.
5 11 C.F.R. § 100.52(d)(1). The usual and normal charge for any services, other than those
6 provided by an unpaid volunteer, is determined by reference to the hourly or piecework charge
7 for the services at the commercially reasonable rate prevailing at the time the services were
8 rendered. 11 C.F.R. § 100.52(d)(2). A committee's receipt from a vendor of a complimentary
9 item or the purchase of goods or service at a discount does not result in a contribution if the
10 discounted goods or services or the complimentary item are made available in the ordinary
11 course of business and on the same terms and conditions offered to a vendor's other customers
12 that are not political committees. See MUR 5942 (Rudolph Giuliani Presidential Committee);
13 Advisory Opinion 1994-10.

14 Both the Committee and Corwin maintain in their supplemental responses that no in-kind
15 contribution resulted from Veritas's discounted or "no charge" services. Veritas did not file a
16 response, and appears to be inactive, as it is considered "delinquent" under Colorado law for failing
17 to file a periodic report that was due on September 30, 2011. And, in any event, Corwin states that
18 he provided virtually all of the services at issue as a subcontractor to Veritas, and he provides
19 information about those services as well as the uncharged services Dillon provided under Veritas's
20 aegis.¹¹

21 The Committee asserts that it paid the usual and normal charge for Veritas's services because
22 it understood Veritas would bill it on a flat-rate, per-project basis rather than at an hourly rate, a

¹¹In the email forwarding his response, Corwin indicates he had been in touch with Dillon who had not decided whether to respond.

1 common arrangement with research consultants. Committee Suppl. Resp. at 1, 3. According to the
2 Committee, the second invoice reflects this arrangement in its statement that the "[f]ee includes all
3 research services and all travel-related expenses for two-person team." *Id.* at 2; see Joint Response
4 at Ex. C. As further support that the full fee was paid, it also points to Barranco's statement in the
5 October 6, 2010, email that the Committee understood it owed nothing further for Veritas's work
6 and the absence of a demand for payment in Corwin's October 4th email, sent after he consulted
7 with his own compliance lawyers. Committee Suppl. Resp. at 2-3. As for the invoice's itemized list
8 of services provided at no charge or at a discount and Corwin's email reference to donated time, the
9 Committee simply states it "cannot speak" to what led Veritas to identify discounts on the invoice or
10 to Corwin's statement, and it has no information that Veritas provided it with any special
11 accommodation not extended to other customers. *Id.* at 3.

12 Corwin makes no mention of a flat-rate arrangement in his sworn supplemental response.
13 Instead, he states that he helped Dillon prepare Veritas's invoice as the more experienced
14 investigator based on his own customary business practice and that the \$85 per hour rate was the
15 same rate CRI charged all of its clients. Corwin Suppl. Resp. at 2, 4. Presumably, Corwin used
16 CRI's rate because Veritas, a two-month old company operated by Dillon, a full time graduate
17 student at the time, had no ongoing business practice.

18 Corwin essentially makes two arguments: (1) that donated, discounted and "no charge"
19 services were provided in the ordinary course of business and on the same term and conditions as
20 provided to non-political clients, and (2) presumably in the alternative, that even if the
21 uncompensated and discounted services were in-kind contributions, their total value was less than
22 the \$2,400 contribution limit in 2010 so Veritas, which Corwin represents was a "single member"
23 LLC "treated as a sole proprietorship," made no excessive or prohibited contribution. *Id.* at 1-2.

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1 Corwin does not specifically state that Veritas was treated as a sole proprietorship "by the IRS," a
2 phrase he expressly uses to describe his own firm, CRI. *Id.* An LLC's tax treatment governs
3 whether any contributions made by it are treated as a corporate contribution, or in the case of a
4 single natural member LLC, as a contribution by the member. *See* 11 C.F.R. §§ 110.1(g)(3) and (4).

5 In support of his "ordinary course of business" argument, Corwin provided numerous
6 redacted invoices and a few emails related to CRI's main business, investigating cases for civil
7 plaintiff and criminal defense counsel, to show that he sometimes waived his own compensation or
8 provided some services connected with investigations at no charge to non-political clients. *Id.* at 2-4
9 and attachments. For the most part, the invoices show Corwin customarily issued itemized invoices
10 billing these clients at an \$85 hourly rate plus travel and expenses but did not charge for certain
11 isolated items such as initial client meetings, mileage related to particular trips, and email updates.
12 Several of the invoices reflect flat-rates for pre-employment background research and witness
13 location information.

14 Importantly, Corwin also provided information about the nature and value of the invoiced
15 "no charge" services and the "huge amounts" of donated time Corwin refers to in the October 4th
16 email. Based on that information, it appears that the total value of those services was \$3,743. This
17 figure can be broken down into three sets of services: (1) services directed at gathering and
18 presenting information aimed at convincing the Committee to pursue the Martin-clergy abuse issue,
19 totaling \$2,040; (2) discounted field work valued at \$1,580; and (3) updated research and a
20 background check, apparently unrelated to the second St. Louis trip valued at \$123.

21 The first set of services, efforts Corwin and Dillon undertook to persuade the Committee to
22 raise the Martin-clergy abuse issue in the campaign, accounts for more than half of the \$3,743 total
23 amount. A significant portion of Veritas's invoiced "no charge" services are attributable to these

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1 efforts – items described as “Prep Time Line/Updated Memo/7 hrs @ \$85” and “Media Consulting.”
2 The time line/updated memo item refers to time Corwin spent immediately following the second St.
3 Louis trip updating a prior opposition memo in the hope that the additional information would
4 convince the Committee to use the Martin-clergy abuse issue (\$595). *Id.* at 4-5. The media
5 consulting item involved two hours (\$170) spent by Dillon educating the campaign about using “the
6 power of video” to raise the issue. *Id.* at 5-6. Corwin maintains that Veritas chose not to charge for
7 these services because it was unable to convince the Committee to use the issue. *Id.*

8 Veritas's efforts to persuade the Committee to go forward with making the Martin-clergy
9 abuse issue public also include Corwin's email reference to “huge amounts” of donated time.
10 Corwin says he was referring in the email to the seven hours he spent updating an opposition memo
11 (the “Prep Time Line/Updated Memo” item) and about 15 hours (\$1,275) he spent searching for
12 news articles about Martin's involvement in the Archdiocese. *Id.* at 6. Corwin explained that his
13 characterization of the amount of time donated to the investigation represented a “deep feeling of
14 frustration” with the campaign for not “exposing Martin's inaction in the face of real harm” to
15 children. *Id.* Corwin says he did not charge the Committee for the 15 hours he spent searching for
16 news articles because the Committee did not approve the work in advance. *Id.* The \$2,049 total
17 value of these services is based on Corwin's use of his \$85 per hour customary rate, including the
18 services Dillon provided. *Id.* at 5-7.

19 Corwin does not address the second set of services: the discounted field work reflected in the
20 invoice. None of the CRI invoices he provided indicates that CRI customarily offered discounted
21 rates for fieldwork, and we have no information from Veritas to explain the discount. The value of
22 the discount appears to be \$1,580. We reach this figure by subtracting the \$800 discounted fee
23 Veritas charged and the Committee paid from \$2,380, the non-discounted price for fieldwork

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1 performed by a two person team for two days (2 people x 14 hours [two 7-hour days] x \$85/hour =
2 \$2,380; \$2,380 - \$800 = \$1,580).

3 The third set of services involves updated research and a background check, the remaining
4 "no charge" invoiced services totaling \$123. Those services consisted of 15 minutes Corwin spent
5 updating a prior search on Amgen, a funder of stem cell research in which Martin's family
6 apparently owned stock (\$21 [rounded] based on an \$85 hourly rate) and a second pre-employment
7 background check on a campaign canvasser suspected of arson at campaign headquarters to
8 determine whether a prior vendor had missed anything in its background check (\$102 [rounded],
9 equivalent to the rate charged for background checks in CRI invoices Corwin provided). *Id.* at 5.

10 Of the \$3,743 in services Veritas provided at no charge or at a discount, the \$2,040 in
11 services reflecting Veritas's unsuccessful efforts to convince the Committee to pursue the Martin-
12 clergy abuse issue does not appear to constitute an in-kind contribution. Because the Committee
13 effectively rejected the work associated with these efforts and Veritas took the work with it when it
14 ended its relationship with the Committee, it does not appear that the services constituted "anything
15 of value." Accordingly, it appears that at most, Veritas may have made an in-kind or prohibited
16 contribution totaling \$1,703 (\$3,743 - \$2,040 = \$1,703).

17 At this point, we lack sufficient information to attribute a definitive valuation to any in-kind
18 or prohibited contribution resulting from Veritas's unbilled or reduced cost services to the
19 Committee. It is unclear whether the parties had a project-based/flat-fee or hourly-fee based
20 arrangement, whether the third payment to Veritas was attributable to the second invoice, and
21 whether or not Veritas elected to be treated as a corporation by the IRS. The available information
22 suggests three possible formulations: (1) that no or at most a \$102 in-kind or prohibited contribution
23 resulted because the parties had a flat-rate/project-based payment arrangement for the second St.

1 Louis trip that the Committee paid in full; (2) assuming that Veritas did not elect tax treatment as a
2 corporation, that an in-kind contribution resulted ranging from \$514 to \$1,703 such that Veritas did
3 not make, and the Committee did not accept, an excessive contribution; or (3) assuming that Veritas
4 elected to be treated as a corporation by the IRS, that a prohibited contribution resulted ranging from
5 \$514 to \$1,703. In any event, the amount at issue appears to be relatively modest and does not
6 appear to warrant further inquiry.

7 First, if the Committee had a project-based, flat rate fee arrangement with Veritas for the
8 second trip, including each of the invoiced items with "no charge," then Veritas did not make, and
9 the Committee did not accept, a prohibited or in-kind contribution. However, the "no charge"
10 services pertaining to the Amgen search and Chris Powers background check, totaling \$123, appear
11 to have been unrelated to the second St. Louis trip, and, if so, may not have been covered by a
12 project-based fee resulting in a non-excessive or prohibited in-kind contribution. Since the minimal
13 time spent on the Amgen research appears similar in size and type to the uncharged services Corwin
14 extended to non-political clients as reflected in the CRI invoices he provided, the amount may be
15 closer to \$102 ($\$123 - \21 [Amgen research rate for 15 minutes] = \$102).

16 Second, if Veritas did not elect to be treated as a corporation and the parties had no flat-rate
17 agreement, at most the total value of services provided without charge and at a discount that could be
18 construed as an in-kind contribution was \$1,703. In that case, Veritas did not make, and the
19 Committee did not accept, an excessive contribution because the contribution limit for 2010 was
20 \$2,400 and neither Corwin nor Dillon made contributions to the Committee. That amount may be
21 reduced from \$1,703 to \$514 if the Committee's reported third payment of \$1,188.99 to Veritas was
22 attributable to any of the services listed in the second invoice, a plausible scenario given that the
23 available information indicates that Veritas performed no other services for the Committee. See

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1 *supra* at 7 and fn 4. Under either or both of these circumstances, Veritas did not make, and the
2 Committee did not accept, an excessive in-kind contribution.

3 Finally, if Veritas elected to be treated as a corporation by the IRS, it is conceivable that
4 Veritas may have made, and the Committee may have accepted, an in-kind corporate contribution.
5 The value of any such contribution would most likely range from \$514 to \$1,703, depending on
6 whether the Committee's reported third payment of \$1,188.99 applies.

7 Given the lack of clarity about the fee arrangement between the Committee and Veritas,
8 which directly relates to the value of any prohibited or unreported excessive contribution, the
9 absence of information about the purpose of the third payment to Veritas, and the uncertainty about
10 Veritas's tax status as an LLC, an investigation would be necessary to determine whether
11 Respondents violated the Act in connection with the "no charge" and discounted services listed in
12 the invoice. In light of the relatively small amount potentially at issue, however, we do not believe
13 such an investigation is warranted. Accordingly, the Office of General Counsel recommends that the
14 Commission exercise its prosecutorial discretion and dismiss this matter as to the Committee
15 regarding any potential violations of 2 U.S.C. §§ 441a(f) or 441b by accepting in-kind excessive or
16 prohibited contributions in the form of services provided at no charge or at a discount and as to any
17 potential violations of 2 U.S.C. § 434(b) by failing to report any such contributions. *See Heckler v.*
18 *Chaney*, 470 U.S. 821, 831 (1985). This Office further recommends that the Commission exercise
19 its prosecutorial discretion and dismiss this matter as to Veritas regarding any potential violations of
20 2 U.S.C. §§ 441a(a)(1)(A) or 441b by making an excessive or prohibited in-kind contributions in the
21 form of services provided at no charge or at a discount. *Id.* Finally, this Office recommends that the
22 Commission close the file in this matter.

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III. RECOMMENDATIONS

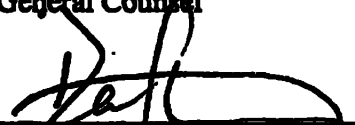
1. Find no reason to believe that Russ Carnahan and Russ Carnahan in Congress Committee and John R. Truman, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to report in-kind contributions in the form of a coordinated expenditure for TheRealEdMartin.com website.
2. Find no reason to believe that Russ Carnahan and Russ Carnahan in Congress Committee and John R. Truman, in his official capacity as treasurer, violated 2 U.S.C. § 441d.
3. Find no reason to believe that Veritas, Research, LLC violated the Act with respect to TheRealEdMartin.com website.
4. Find no reason to believe that Michael Corwin violated the Act with respect to TheRealEdMartin.com website.
5. Find no reason to believe that Jeannine Dillon violated the Act with respect to the RealEdMartin.com website.
6. Dismiss this matter as to Russ Carnahan in Congress Committee and John R. Truman, in his official capacity as treasurer, regarding any potential violations of 2 U.S.C. § 441a(f) or 2 U.S.C. § 441b by accepting in-kind contributions in the form of services provided at no charge or at a discount, and as to any potential violations of 2 U.S.C. § 434(b).
7. Dismiss this matter as to Veritas Research, LLC regarding any potential violations of 2 U.S.C. §§ 441a(a)(1)(A) or 441b by making an excessive or prohibited in-kind contribution in the form of services provided at no charge or at a discount.
8. Approve the attached Factual and Legal Analyses.
9. Approve the appropriate letters.

10. Close the file.

Date

4/10/12

Anthony Herman
General Counsel



BY: Daniel A. Petalas
Associate General Counsel for Enforcement



Roy Q. Lockett
Acting Assistant General Counsel



Dawn M. Odrowski
Attorney

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